

Misc. Criminal Application No.1096 of 1996.

Coram: R.R. Jain, J.

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April 3, 1996.

Order:

Heard learned A.P.P. Mr. S.T. Mehta for the State.

My attention is drawn to telegram received on 26.3.1996 sent by respondent praying for adjournment of this application. It would be pertinent to note that the matter was notified on board for passing appropriate orders on 20.3.1996 and notice was issued making it returnable on 26.3.1996. Though the notice was served yet the respondent did not appear and made request for adjournment vide telegram referred to above. Therefore, notice issued by this court though not been received back either served or unserved but the telegram itself is an evidence of due service upon the respondent. Having served with the process, it is the duty of the party to appear and resist the proceedings. Despite due service, the respondent has not bothered to resist by itself is a circumstance suggesting admission of allegations made against him. In other words, in absence of express challenge to the allegations shall be deemed to have admitted.

Vide this application, the State has prayed for cancellation of bail alleging violation of terms and conditions imposed by this court while enlarging him on bail vide order dated 20.12.1995. Xerox copy of the order passe by this court (Coram: K.R.Vyas, J.) in Misc. Criminal Application No.5383 of 1995 is placed on record. As per conditions imposed is that the respondent shall not enter village Dhrol till the trial over and shall report to Kalavad Police Station once in a month on 1st between 11 A.M. to 5 P.M. The investigating officer has filed report saying that in gross violation of this condition, the respondent entered the territory of village Dhrol on 19.1.1996 without any permission. The allegation that the respondent entered Dhrol territory goes unchallenged as the respondent has not appeared nor has filed any affidavit in reply.

It is true that orders for cancellation of bail should not be in the nature of mechanical process and should always be supported by cogent, concrete and overwhelming circumstance. In my view, violation of any condition imposed or direction issued by this court is an

overwhelming circumstance else would loose the sanctity and force. In this case, the condition on which the present respondent was enlarged on bail has been intentionally violated and, therefore, the act itself would be an overwhelming circumstance compelling the court to cancel the order of bail granted by this court vide order dated 20.12.1995.

For the reasons stated above, the application deserves to be allowed. The order of this court dated 20.12.1995 passed in Misc. Criminal Application No. 5383 of 1995 granting bail to the present respondent is hereby cancelled and recalled. The respondent is directed to surrender before the trial court on 8.4.1996 failing which the trial court would be at liberty to take appropriate steps in accordance with law. Accordingly, application stands allowed.

Notice discharged.

3.4.1996. (R.R.Jain, J.)